

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

JIMMY PEREZ OLIVO

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Plaintiff

* Civil No. 97-2068(SEC)

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v.

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28 U.S.C. § 2255

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UNITED STATES OF AMERICA

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Defendant

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ORDER

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U.S. DISTRICT COURT
SAN JUAN, P.R.

Pending is petitioner's "Motion Requesting Issuance of Certificate of Appealability."

(Docket # 76). Rule 22(b) of the Federal Rules of Appellate Procedure directs that "in a 28 U.S.C. § 2255 proceeding, the applicant cannot take an appeal unless a circuit justice or a circuit or district judge issues a certificate of appealability under 28 U.S.C. § 2253(c)." Section 2253(c)(2) in turn provides that "[a] certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right." In order to meet this standard, a petitioner "must demonstrate that the issues are debatable among jurists of reason; that a court could resolve the issues [in a different manner]; or that the questions are adequate to deserve encouragement to proceed further." Barefoot v. Estelle, 463 U.S. 880, 892-93 (1983) (internal quotation marks omitted).

For the reasons set forth in our opinion and order of January 26, 1998 (Docket # 23) and subsequent opinion and order of August 30, 1999 (Docket # 71), we find that petitioner has failed to make the requisite substantial showing of the denial of a constitutional right. Therefore, petitioner's request for a certificate of appealability is hereby DENIED.

This Court having denied the application for issuance of a certificate of appealability,

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a request for a certificate of appealability should now be filed promptly before the First Circuit Court of Appeals. Such application "should be accompanied by a copy of . . . [this] court's order and a memorandum giving specific and substantial reasons, and not mere generalizations, why a certificate should be granted." Local Rule 22.1(c) of the United Court of Appeals for the First Circuit.

SO ORDERED.

In San Juan, Puerto Rico, this 18 day of November, 1999.


SALVADOR E. CASELLAS
United States District Judge